

MEMORANDUM

TO: Members, Clark Fork Basin Water Management Task Force (Task Force)
FROM: Gerald Mueller
SUBJECT: Summary of the August 7, 2006 Task Force Meeting
DATE: August 11, 2006

Participants

The following people participated in the Task Force meeting:

Task Force Members:

Gail Patton	Sanders County Commissioner
Marc M. Spratt	Flathead Conservation District/Flathead Chamber of Commerce
Arvid Hiller	Mountain Water Company
Jim Dinsmore	Granite Conservation District
Nate Hall	Avista
Fred Lurie	Blackfoot Challenge
Bill Slack	Flathead Joint Board of Control

Staff:

Gerald Mueller	Consensus Associates
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Other:

Dr. David Shively	UM Department of Geography
Gary MacLaren	House District 89

Meeting Agenda

- July 6, 2006 Meeting Summary
- Membership Update
- HJR 3 Update
- Ground Water Conferences
- Policy Paper
- Public Comment
- Schedule meeting

July 6, 2006 Meeting Summary

The Task Force made no change to the July 6 meeting summary.

Membership Update

Jay Stuckey has resigned from the Task Force because his work load no longer allows him to attend meetings on a regular basis. Mr. Mueller asked for recommendations for a replacement for Jay as the lower basin representative.

HJR 3 Update

Gerald Mueller reported that Governor Schweitzer has sent a letter to the Boise office of the Bureau of Reclamation (BOR). While he has not yet seen a copy of the letter, Mr. Mueller stated that he understands that the letter requests a meeting to begin discussions of the process by which the BOR would respond to the state's request for a contract for Hungry Horse water. Mr. Mueller also said that he had participated in a conference call including DNRC Director Mary Sexton leading up to the letter. During the call, Ms. Sexton expressed

concern about the timeliness of the state quantifying an amount of water to request from the BOR. Mr. Mueller also met with Hal Harper and discussed the issue of whether and how the state would decide how much water to request. In response to his question, Mr. Mueller told Mr. Harper that Mike McLane had provided a rough estimate of 500,000 acre-feet as the additional amount that might be consumed over the next 50 years. This number was based on a 1980 study that determined that 500,000 acre-ft to be the total amount consumed in the basin up to 1980. Mr. Harper indicated that he understood that at some point the state would have to ask the BOR for a specific amount of water. He also said that he was not necessarily comfortable with the 500,000 acre-ft. number because it might be too low.

Ground Water Conferences

Mr. Mueller passed out two handouts, the latest versions of the agendas for the technical and policy conference and a list of speakers for both. See Appendices 1 through 3 below.

The Task Force agreed with Marc Spratt's suggestion that Randall J. Overton be invited to participate on the last panel on the technical conference agenda that will discuss the information, tools, and assessment methodologies needed to manage the basin's ground effectively. Mr. Overton is a private sector hydrologist who has worked on ground water in several states. Mr. Overton will take the slot previously designated for Mr. Spratt, and Marc will assume the duty of providing the conference wrap up instead.

Work will continue to confirm speakers, including Governor Schweitzer.

Policy Paper

At its July meeting, the Task Force discussed preparing a policy paper on the status of the first-in-time, first-in-right water allocation and management system. Mr. Mueller passed out an outline of a possible paper, which is included below as Appendix 4. The Task Force discussed the purpose and possible outcomes of preparing a paper. The members agreed that the purpose might include assessing the status of the present water allocation rule, first-in-time, first-in-right water, as well as how water supplies might be developed for the Clark Fork basin within the present legal system. A possible outcome might be convincing the next legislature to conduct an interim study of these questions.

The Task Force agreed as next steps to review the outline prepared by Mr. Mueller and suggest additions and other changes to it.

Public Comment

There was no additional comment.

Next Meeting

Because the first Monday of September falls on Labor Day, the next meeting was scheduled for the second Monday, September 11. The agenda will include the HJ 3 implementation and ground water conference updates, continued discussion of the policy paper on the status of the first-in-time, first-in right water right allocation and management system, and a discussion with fishery interests of the likely goal or requirement for fish flows in the basin. Bruce Farling and Stan Bradshaw will be invited from Trout Unlimited and Brian Marotz from DFWP's Kalispell office.

Appendix 1

Managing Clark Fork River Basin Ground Water

Preliminary Technical Conference Agenda

September 27, 2006

- I. **7:30 AM, Registration and Continental Breakfast**
- II. **8:15 AM, Welcome**
Gerald Mueller will welcome participants, introduce the Task Force, and set out the conference goals and agenda.
- III. **8:30 AM, What Do We Know About Clark Fork Basin Ground Water?**
Tom Patton, Groundwater Assessment Program Manager, Montana Bureau of Mines and Geology, will overview existing ground water information for the Clark Fork River basin by sub-basin.
- IV. **9:15 AM, Ground Water Modeling Tools**
Professor John Metesh, Research Division Chief, Montana Bureau of Mines and Geology, and Professor William Woessner, Acting Director, Center for Riverine Science and Stream Renaturalization, University of Montana Department of Geology, will discuss ground water modeling, including what it is, how it is done, what data are needed, and the kind of questions it can address.
- V. **10:30 AM, Break**
- VI. **10:45 AM, Eastern Snake River Plain Case Study**
Dr. Donna Cosgrove, Assistant Professor in the Department of Biological and Agricultural Engineering, University of Idaho at Idaho Falls, will present research about the development of tools for the conjunctive management of ground water and surface water on the eastern Snake River Plain in southeastern Idaho
- VII. **11:30 AM, Lunch**
Lunch will be provided to conference participants (UM sandwich buffet). Mary Sexton, DNRC Director, will address TU vs DNRC and its significance to ground water development.
- VIII. **1:00 PM, Rathdrum Aquifer Case Study**
Rod Caldwell, USGS Helena Office, will discuss research on the Rathdrum aquifer underlying northern Idaho and the Spokane, Washington area.
- VIII. **1:45 PM, Gallatin Valley Case Study**
Dr. Eloise Kendy will discuss the past, present, and future roles of artificial ground-water recharge in managing streamflow, based on work in the Gallatin Valley.
- IX. **2:30 PM, Break.**
- X. **2:45 PM, Ground Water Management Needs**
A panel will discuss what information, tools, and assessment methodologies are needed to management ground water effectively in the Clark Fork River basin. Speakers include: Marc Spratt, RLK Hydro and a Task Force member; Steve Kilbreath, Subdivision Review Section, the Montana Department of Environmental Quality; Russ Levens, DNRC hydrologist; Professor Chris Gammons, Montana Tech Department of Geological Engineering (invited); and Tom Patton, Montana Bureau of Mines and Geology.
- XI. **4:45 PM, Wrap Up**
A Task Force member will summarize conference and discuss next steps.
- XII. **5:00 PM, Adjourn.**

Appendix 2
Managing Clark Fork River Basin Ground Water
Preliminary Policy Conference Agenda
November 9, 2006

- I. 8:00 AM, Registration**
- II. 8:30 AM, Welcome**
Gerald Mueller will welcome participants, introduce the Task Force, and set out the conference goals and agenda.
- III. 8:45 AM, Clark Fork Basin Economic and Demographic Trends**
Dr. Larry Swanson, Center for the Rocky Mountain West, will overview present and projected future Clark Fork basin population levels and economic trends (confirmed).
- IV. 9:45 AM, Break**
- V. 10:00 AM, Effect of Population and Economic Growth on Water Use**
Robert Glennon Morris K. Udall Professor of Law and Public Policy (confirmed)
- VI. 11:00 AM, Water Supply Assessment**
The first of three panels will address present and future water supply issues/problems.
Panel 1- Tribal and local government elected officials will answer the following questions:
- What water supply problems are you currently experiencing?
 - What water supply problems do you foresee over the next 50 years?
 - How are you addressing these problems?
- VI. Noon, Lunch**
Luncheon Speaker - Governor Schweitzer (invited)
- VII. 1:00 PM, Water Supply Assessment Continued**
Panel 2 - Tribal and local government planners will address the following questions:
- What planning activities are underway to meet future water demands?
 - What are your current and projected water supply needs?
 - What planning and management issues do you face?
 - What tools do you need to address them?
- VIII. 2:00 PM, Break**
- IX. 2:15 PM, Water Supply Assessment Continued**
Panel 3 - Water users/interests will address the following questions
- What water supply problems are you currently experiencing?
 - What water supply challenge do you foresee over the next 50 years?
 - How are you addressing these problems/challenges?
- IX. 3:30 PM, Break.**
- X. 3:45 PM, Policy and Administrative Tools**
Dr. David Shively and Mike McLane will address policy and administrative tools for allocating ground water while protecting surface water conditions (i.e. augmentation, ground water storage, water banking, water trades etc.)
- XI. 4:30 PM, Conference Wrap Up**
A Task Force member will summarize conference and discuss next steps.
- XII. 5:00 PM, Adjourn.**

Appendix 3 Speaker List

Technical Conference

Status

Tom Patton	confirmed
Rod Caldwell	confirmed
Dr. William Woessner	confirmed
Mary Sexton	confirmed
Dr. Donna Cosgrove	confirmed
Dr. John Metesh	confirmed
Marc Spratt	confirmed
Steve Kilbreath	confirmed
Rus Levens	confirmed
Dr. Jack Stanford	No
Professor Chris Gammons	Provisional yes
Jim Dinsmore	To be contacted

Policy Conference

Dr. Larry Swanson	confirmed
Prof. Robert Glennon	confirmed
Governor Schweitzer	Invited

Panel 1

Sen. Shockley - Moderator	GM to invite
Ravalli County Commissioner Chilcott	confirmed
Powell County Commissioner Jones	confirmed
Polson Mayor Randy Ingram	confirmed
Thompson Falls Mayor Louis LaRock	Invited - No response
Lake County Commissioner Trusler	confirmed
CSKT Chair James Steele, Jr.	Invited - No response

Panel 2

Rep. Joey Jayne	GM to invite
Jon Sesso, Butte-Silver Bow planner	confirmed
Jeff Harris, Flathead County Planning Director	No
Dan Miles, Sanders County Planner	confirmed
Tribal planner	Invited - No response

Panel 3

Rep. Verdell Jackson - Moderator	confirmed
Steve Hughes, Flathead Irrigation District	Invited
Ronald Buentemeier, Flathead CD	Marc Spratt to invite
Arvid Hiller, Mountain Water	GM to invite
Matt Clifford, Clark Fork Coaliltion	GM to invite
Glen Oppel, Montana Assoc. of Realtors	Invited

Appendix 4

Status of the First-In-Time, First-In-Right Water Right Allocation and Management System

- I. Introduction
 - A. Historically, water in Montana allocated and managed according to the first-in-time, first-in-right system.
 - B. Forces underway to change that system to one in which decisions are made by use priority and in which water is increasingly the servant of money rather than priority date.
- II. History of water allocation and use.
 - A. Pre-1973 Water Use Act
 - 1. New uses supported by new water rights.
 - 2. Individual and court water right administration and enforcement based first-in-time, first-in-right system.
 - 3. No centralized records.
 - 4. Ground and surface water managed separately.
 - B. Post-1973 Water Use Act
 - 1. Water rights permits issued by DNRC for new and changed water uses.
 - 2. Beginning of state-wide adjudication because of concern arising from coal development.
 - 3. Greater concern about protecting instream uses - water leasing program; Bean Lake III Supreme Court decision.
 - 4. Water reservations by public entities provide for future water needs in the Missouri and Yellowstone basins.
 - 4. Basin closures as perception increases of over appropriation.
 - 5. Ground water source of new water development.
 - 6. Greater concern about conjunctive management of surface and ground water - TU vs. DNRC Supreme Court decision .
 - C. Post Adjudication
 - 1. All water rights in enforceable water right decrees.
 - 2. Water right integrated - water management will have less of a local focus
 - 3. Diversions measured.
- III. Implications for First-in-time, First-in-right System
 - A. Creating domestic use priority outside of traditional water allocation and management system.
 - 1. 35 gpm/10 acre-ft/yr ground water permit exemption.
 - 2. DNRC "manifold" expands use of exemption in new subdivisions.
 - B. No water reservations or other means of providing for future uses in the Clark Fork River basin means that new water uses will depend on purchasing existing water rights, likely shifting water away from agriculture
 - C. Enforcement system increasingly complicated and expensive for individual water rights holders
 - 1. Influx of people unfamiliar with water rights creating more conflicts.
 - 2. Difficult to get timely decisions from district courts
 - 3. Water right integration will create new relationships among water rights and likely reduce local focus of water management.
 - 4. Water right integration will pose new challenges for decree enforcement via water commissioners.
 - 5. Traditional agricultural water right holders cannot pay enforcement costs.